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## State v. Jones Respondent's Brief Dckt. 44951

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44951
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2016-3620
	)	
JEREMIAH WAYNE JONES,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Jones failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of five years, with two years fixed, imposed upon his guilty plea to unlawful possession of a firearm?

Jones Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Jones pled guilty to unlawful possession of a firearm and the district court imposed a unified sentence of five years, with two years fixed. (44436 R., pp.89-93.) Jones appealed and the Idaho Court of Appeals affirmed his conviction and sentence. State v. Jones, 2017 Unpublished Opinion No. 346, Docket No. 44436 (Idaho App.,

February 2, 2017). Jones filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (44951 R., pp.11, 22-24.) Jones filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (44951 R., pp.25-27.)

Jones asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his possible mental health issues. (Appellant's brief, pp.2-4.) Jones has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Jones must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Jones has failed to satisfy his burden.

In support of his Rule 35 motion, Jones provided a Psychiatric Progress Note dated September 1, 2014, and pages 1 and 6 of a mental health assessment completed on August 28, 2016, which, he asserted, "seem to indicate that [he] has a serious history of mental illness that dates back to 2014, consisting of ADHD, PTSD, and Bipolar Disorder." (44951 R., pp.16-20.) This was not new information before the district court. It was reported in the PSI that Jones had "past diagnoses" of ADHD, ADD, and PTSD and that he had previously been prescribed Adderall, Clonidine, and Depakote. (PSI, p.20.<sup>1</sup>) The PSI also contained information with respect to Jones'

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Jones 44436 psi.pdf."

suicide attempts and his claim that “the instant offense stemmed from a failed suicide attempt.” (PSI, p.20.) On appeal, Jones claims that, “at intake, he was assessed with ADHD, depression, and PTSD ....” (Appellant's brief, p.3 (citing 44951 R., p.18).) However, this information is not included under the diagnoses portion of the assessment; rather, it is listed on page 1 under “Presenting Problem/Reason for Assessment (List of current symptoms or concerns and the source of information)” and therefore appears, in fact, to be a list of “current symptoms or concerns,” as opposed to a list of diagnoses made by the evaluator. (44951 R., p.18 (parenthetical notation original).) Instead, diagnoses made by the evaluator appear on page 6 of the assessment, under the heading “Provisional Diagnosis.” (44951 R., p.19.) The provisional diagnoses include rule-out PTSD and rule-out “Unspecified Bipolar [Disorder] with psychotic features” or “Unspecified Depressive [Disorder],” followed by the evaluator’s recommendation for placement “in General Population with follow-up Mental Health Services.” (44951 R., p.19.)

That Jones may have a mental health disorder and should receive follow-up mental health services while incarcerated is not information that was unknown to the district court at the time of sentencing. Because Jones presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion.

Even if this Court addresses the merits of Jones’ claim, Jones has still failed to establish an abuse of discretion. In its order denying Jones’ Rule 35 motion, the district court noted that, while it was “well aware at the time of sentencing that Mr. Jones has a

history of mental health issues,” it was also aware of Jones’ “history of being non-compliant with his medications, using drugs, and failing to comply with the terms of parole.” (44951 R., p.23.) Indeed, Jones has a lengthy history of disregard for the law, the terms of community supervision, and institutional rules. (PSI, pp.7-16.) His record includes juvenile adjudications for inattentive/careless driving, leaving the scene of an accident, invalid driver’s license, unlawful entry, disturbing the peace (amended from battery), possession of a weapon by a minor, three adjudications for battery, four adjudications for malicious injury to property, and two adjudications for petit theft. (PSI, pp.7-12.) Between 2008 and 2011, Jones was convicted of burglary, possession of a controlled substance with intent to deliver, driver’s license violation, DUI, resisting or obstructing officers, and felony eluding a peace officer, with a persistent violator enhancement. (PSI, pp.12-13.) He also violated his probation multiple times, and later violated his parole by absconding in 2013 (for approximately 10 months) and again in 2015 (for approximately 11 months). (PSI, pp.12-13, 15.)

Jones committed the instant offense while on absconder status, during which he stole a gun from a friend’s home and, while riding in the backseat of a car with his girlfriend, he told her that “he was going to kill her and himself,” then “removed a gun from his waistband and fired it at the back driver’s side window.” (PSI, p.4.) When officers located Jones 10 days later, he “fled out a window, ran from officers, jumped across several fences, entered an unlocked residence ... and scared the lone female occupant causing her to run fleeing from her home, then fled from that residence and encountered Boise Police Officer Wittmuss and, at gun point, complied with the officer’s commands and was taken into custody.” (PSI, p.4.) When officers searched Jones,

they discovered “a socket with burnt residue, a small amount of suspected marijuana and \$113.00 in cash.” (PSI, p.4.)

Subsequently, while in the Ada County Jail, Jones made phone calls to his girlfriend, “ask[ing] her if ‘she has his back,’ tell[ing] her that if witnesses don’t show up they won’t be able to prosecute him, and inquir[ing] about when they can get married because if she is his wife then she can’t be made to testify against him.” (PSI, p.5.) He also told her “how to help him facilitate third party contact with her” and asked others “to convey messages to her.” (PSI, p.5.) Jones also incurred a DOR for assaulting another inmate while the instant offense was pending. (PSI, p.15.) The presentence investigator determined that Jones presents a high risk to reoffend. (PSI, p.23.)

Jones has previously been provided with an abundance of rehabilitative opportunities, including New Directions in 2008, a traditional rider in 2010, Anger Management and Relapse Prevention Matrix in 2012, Moral Reconation Therapy in 2013, and the CAPP program in 2014. (PSI, pp.16, 210.) Despite this, Jones resumed his substance abuse and illegal behavior almost immediately upon being paroled in December 2014; he admitted that, in the year preceding his arrest for the instant offense, he “used drugs, specifically methamphetamine and marijuana, on a regular, often daily, basis that consisted of intravenous use of meth. He further stated that he financed his on-going drug use by selling meth.” (PSI, p.21.) Jones also reported that he “stopped taking his Depakote” soon after he was released on parole. (PSI, p.20.)

The district court considered all of the relevant information and appropriately determined that a reduction of sentence was not warranted, particularly in light of Jones’ incessant criminal offending, his history of violating both probation and parole and of

absconding supervision, his decision to discontinue his mental health medication and abuse illegal drugs rather than seeking treatment, his failure to rehabilitate or be deterred despite numerous prior treatment opportunities and legal sanctions, and the risk he presents to the community. Given any reasonable view of the facts, Jones has failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

### Conclusion

The state respectfully requests this Court to affirm the district court's order denying Jones' Rule 35 motion for a reduction of sentence.

DATED this 26th day of July, 2017.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of July, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General